

My email is archived to a place I can access back to late 2001. The Agency can probably go back even further in their archived computer tape backups, so I'm not sure how far we legally have to go. There is not enough file space for me to print and save every official record, so admittedly, I do not have everything the requestor is seeking in hard copy form.

The number of records I have that meet the time period of his request is 36,867. If it took an average of one minute per message to review it for sensitive information, and I know there will be based on our responses to the Washington Post and NRDC FOIA's on last year's DC lead issue, and redact that information, for my messages alone that would be about 615 hours, or about 25 days.

Redacting information from electronic files will be very hard to do. I would guess that it would be easier for us to print hard copy of those files and manually redact with a marker.

▼ Cynthia Nadolski/R3/USEPA/US


Cynthia Nadolski/R3/USEPA/US

09/08/2005 09:10 AM

To
cc

Rick Rogers/R3/USEPA/US@EPA
George Rizzo@EPA, James Jerpe
<jerpe@intercom.net>, Richard Vanholt/R3/USEPA/US,
Victoria Binetti@EPA

Subject

Re: Fw: Your Requests for Information under FOIA 

**ATTORNEY CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT PRIVILEGED**

Rick,

Our FOIA regulations require us to provide information to requesters in electronic form if they request it, if we can do so. Richard is checking with CSB to see if it is possible for us to provide the emails electronically and how difficult it would be to do so if it is possible. I seriously doubt that it is as easy a process as this requester seems to think. I also doubt that every email message that falls without the scope of the request is still available electronically since the Agency's policy is to delete such information periodically (every 90 days?). If the requester really wants to see every email message sent to and from the three individuals he mentioned from June 1, 2002, to the present, all of you would need to search your files for hard copies of all the messages and attachments that you have printed out and filed as you are required to do by the Federal Records Act.

As you indicated, responding to such a broad request will increase the cost dramatically. Therefore, we would need to re-estimate the cost and provide the new estimate to the requester. Since we don't yet know the extent to which we can respond electronically, we won't be able to determine what the total cost estimate would be. As a starting point, the three of you could start thinking about how long it would take for each of you to go through and review all your files for the past three years and provide an estimate of that cost.

In the meantime, Richard and I will determine our capability for responding electronically, how much information is still available electronically, how much time it will take to transfer such information to a disk, etc. Once we have a better idea of what we are dealing with, I think we will probably send a letter to the requester under Richard's signature explaining our capabilities and/or lack thereof, as well as informing him of how much it will cost him to get this information. Please try to put together a rough estimate of the volume of records at issue and the amount of time it would take to respond to this request so that we can start drafting a letter to the requester providing him with a reality check.

CN

▼ Rick Rogers/R3/USEPA/US

Rick Rogers/R3/USEPA/US

To

Richard Vanholt/R3/USEPA/US, Cynthia

09/08/2005 07:55 AM

cc Nadolski/R3/USEPA/US@EPA
George Rizzo@EPA, James Jerpe
<jerpe@intercom.net>, Victoria Binetti@EPA
Subject Fw: Your Requests for Information under FOIA

Richard, Cynthia:

Regarding Dr. Edwards FOIA requests below, I have a couple of questions:

The first one is related to hard copy vs. electronic versions of the documents requested. In responding to this request, we printed hard copies of the emails and any attachments to those Emails. Is it the Agency's policy to send hard copy or are we able to send electronic versions of documents? My concern is that these documents can be altered once out of our hands and made to read differently, not that I'm concerned that Dr. Edwards would do that, but I thought we typically respond with hard copy. Another problem is that I'm not sure there's a way to export emails with their attachments in a format that he would be able to read.

Second question is interpretation of one of his requests. Here is the one in question:

"I am requesting electronic copies of all e-mails sent to and from the following individuals associated with EPA Region III. The time frame of interest is 6/1/2002 to present. Please include e-mails to any aliases as well as the e-mail addresses indicated below. These three individuals are: 1) Rick Rogers, E-mail: rogers.rick@epa.gov; 2) George Rizzo, E-mail: Rizzo.George@epa.gov; and 3) James Jerpe, E-mail: jerpe@intercom.net."

I interpreted this request to include only those E-mails sent between me, George and Jim; not every email we ever received from or sent too anybody. Was that a logical interpretation of the request? Dr. Edwards' message below clarifies that he wanted all Emails we received or sent during that three year time period. I guess now that he clarified the question, I know what he wants, but that will increase the cost estimate immensely since that will require reviewing tens of thousands of messages to look for anything that would need to be withheld or redacted (for me, that equates to almost 37,000 email messages, plus any attachments). Plus, that will also increase the amount of time we will be requesting ORC assistance in regards to withhold decisions for those documents flagged by us.

How do we handle that in terms of a re-estimate of the costs. Also, if we can respond electronically (assuming I can find a way to export a message and its attachment to keep them together), we'll have to find a way to put them all in one place to copy to CD's and also separate out those that could potentially be withheld so we can provide them to ORC for concurrence on the withhold decision (if that is necessary).

Thanks,

Rick

----- Forwarded by Rick Rogers/R3/USEPA/US on 09/08/2005 07:22 AM -----

Marc Edwards <edwardsm@vt.edu>

09/07/2005 07:14 PM

To Rick Rogers/R3/USEPA/US@EPA
cc GROUP R3FOIA@EPA
Subject Re: Your Requests for Information under FOIA

Today, I received a box which Rick said was a partial fulfillment of my August 8 FOIA request. As you know, I had received an estimate of \$300 to complete this request, and I paid it promptly. I was a little shocked when Rick said that this box was about 90% or so of what I would receive. So many e-mails were obviously missing.

Rick had previously asked me, via e-mail, to narrow my requests. I decided not to do that and to go with my original requests, and I paid the estimated total costs. Trying to figure out what on earth was going on, I read Rick's cover letter dated September 2, 2005. In that letter, there is a statement that my FOIA was for "copies of e-mail correspondence between certain EPA staff." I never asked for between. I asked for copies of all e-mails to and from three individuals. I never approved, nor wanted, just the e-mails sent between these individuals.

At what point did my request get interpreted as "between" the listed EPA staff. At no point in the phone calls or in my request, did I ever say I wanted the e-mails "between" these individuals.

Also, to ease the burden on those involved and to save trees, I requested electronic copies. When such a legal request is made for an individuals e-mail to Virginia Tech, the person in charge of the electronic server goes to it, downloads all the e-mails, and then puts it on a disk. It takes all of 10 minutes. The person whose e-mails are being downloaded is not even told of this, nor are they involved in the process of picking and choosing what e-mails get transmitted.

I guess I'll wait to see where my request got off track and why.

Marc Edwards

At 08:43 AM 8/16/2005, Rogers.Rick@epamail.epa.gov wrote:

>Dear Marc,
>
>The four information requests you submitted to EPA Region III's web site
>were forwarded to me today to coordinate the responses.
>
>Background and Potential Fees:
>
>I am writing to ask you if you could narrow two of the three requests
>to specific topics in which you are interested and to inform you of the
>fee that could potentially apply for responding to your requests.
>
>Following the Freedom of Information Act regulations, information
>requestors are charged a fee based on the cost of processing the
>response unless the FOIA requestor meets certain criteria under which
>the fee can be waived.
>
>Since the basis for all four of your requests is the same, we will be
>consolidating our response into one process. If we have to respond to
>your requests as written, the estimate for our costs is more than \$250.
>The Code of Federal Regulations requires the requestor to pre-pay a part
>or all of the estimated costs prior to the Agency beginning to process
>the response if the costs will be greater than \$250. We are also
>required to notify you if the cost of the response will exceed \$25.
>
>One purpose of this correspondence is to notify you that the cost to
>respond to your request will exceed \$25 and is estimated that it will
>exceed \$250.
>
>Your Information Requests and My Requests to you to narrow their focus:
>
>The first request below is OK and will not take long to process the
>response:
>
> "I would like copies of any minutes, reports, meeting notes, or other
> documentation related to Marc Edwards' EPA sub-contract with Cadmus
> for work on lead with the Washington aqueduct and DC WASA. This
> includes anything from DCWASA directly or remotely related to that
> Cadmus contract. Also, any reports or written material from DC WASA
> related to copper pitting, copper pinholes, or a lawsuit on pitting
> in the time period 1/1/2003-5/31/2004. Likewise, any discussion,
> electronic or otherwise, related to the handling of the sub-contract
> between Cadmus and Marc Edwards. I would like similar documentation
> for the follow up "EPA sub-contract between Cadmus and Dr. Steve
> Reiber."
>
>We do not typically have much information regarding sub-contracts our
>contractors enter into, so it will not take long to search our files and
>electronic records to locate any responsive documents because there
>really are not many at all in our possession.
>
>The second one that reads:
>
> "I would like complete copies of all work records and notes authored

[illegible]



{In Archive} Re: FOIA advice needed

Rick Rogers to: Cynthia Nadolski
Cc: Stephen Field

08/11/2005 10:54 AM

From: Rick Rogers/R3/USEPA/US
To: Cynthia Nadolski/R3/USEPA/US
Cc: Stephen Field/R3/USEPA/US@EPA
Archive: This message is being viewed in an archive.

Cynthia,

thank you for the quick reply. We may have some documentation that would meet an exemption request. That will be particularly true if the person does not narrow the request. So, we may need a quick review of documents we flag for potential withhold.

I will contact the requestor and ask that he narrow his request to the topics he is truly interested in. We will probably need to send a partial response and ask for an extension because the SEE employee who would have to generate all the documentation requested leaves for a three week vacation four days from now. He won't possibly be able to get done his work searching through and printing the E-mail messages requested.

Thanks again,

Rick
Cynthia Nadolski/R3/USEPA/US



Cynthia
Nadolski/R3/USEPA/US
08/11/2005 10:38 AM

To Rick Rogers/R3/USEPA/US@EPA
cc Stephen Field/R3/USEPA/US@EPA
Subject Re: FOIA advice needed

Rick,

Our regulations require that a requester describe the records that he is seeking with enough specificity to allow EPA employees to identify and locate them. If we determine that the records are not sufficiently described, we are permitted to contact the requester and ask for additional identifying information regarding the records requested. We also routinely contact requesters and ask that they narrow the request. Most requesters are willing to do so, especially when they learn that we will charge them for the time that we spend searching for documents and reviewing them to determine if they are responsive to the request.

We are not allowed to ask why the requester wants the documents. If they request a waiver or reduction of fees, they would have to explain what they plan to do with the records in order to meet the requirements for a waiver or reduction of fees, i.e., release of the documents is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

We are required to notify the requester if we determine that it will cost more than \$25.00 to process the request unless the requester has indicated that he is willing to pay fees as high as those anticipated. When a requester has been notified that the actual or estimated fees will amount to more than \$25.00, we will do no further work on the request until the requester agrees to pay the fees. This time is excluded from the 20 calendar days that we have to respond to a request. In addition, if we determine or estimate that the total fees to be charged will be in excess of \$250.00, we can require that the requester make an

advance payment of the amount of the estimated fees before we begin to process the request, unless we get an assurance of payment from a requester that has a history of prompt payment. Since you indicated that it will cost about \$500.00 to process the requests, you should notify Richard Van Holt, who can check to see if the requester has a history of prompt payment and provide you with a model of a prepayment letter. If the requests were assigned to multiple divisions, Richard will coordinate with the other divisions and he will send the letter requesting prepayment.

We are also allowed to aggregate requests if we believe that the requester is attempting to divide a request into a series of requests to avoid paying fees. We may assume that multiple requests have been made for this purpose if we receive multiple requests within a 30-day period, which appears to be the case here.

I hope that this helpful. Please feel free to contact me (2673) if you would like to discuss this in more detail, if you have additional questions, or if I can assist you in processing these requests.

CN

Rick Rogers/R3/USEPA/US



Rick Rogers/R3/USEPA/US

08/11/2005 09:35 AM

To Cynthia Nadolski/R3/USEPA/US@EPA

cc Stephen Field/R3/USEPA/US@EPA

Subject FOIA advice needed

Cynthia,

I was told you are handling FOIA issues in ORC (let me know if that's wrong). We received three FOIA requests from the same person.

(b) (5)

(b) (5)

Also, the requestor does not say why they are requesting the material. Does FOIA law require the requestor to identify the purpose of the request or is that only required if they request a waiver from any fees associated with the cost of responding to the request? Also, do we have to notify the requestor if the cost estimate will be above a certain dollar amount? As they stand now, I'm sure it's going to be about \$500 or so to process the response.

Thanks,

Rick Rogers
Drinking Water Branch
WPD



{In Archive} Re: FOIA Request 03-RIN-01724

Rick Rogers to: Jon Capacasa
Cc: George Rizzo, Josephine Watson

10/25/2005 11:02 AM

From: Rick Rogers/R3/USEPA/US
To: Jon Capacasa/R3/USEPA/US@EPA
Cc: George Rizzo/R3/USEPA/US@EPA, Josephine Watson/R3/USEPA/US@EPA
Archive: This message is being viewed in an archive.

Cynthia Nadolski worked with us on the earlier Edwards FOIA's and had sent him a letter regarding our capabilities of sending documents electronically. I'll forward a copy. Basically, I think she said that we could do it, but that we still had to review each document and the costs for that would be passed on to him.

Rick
Jon Capacasa/R3/USEPA/US



Jon Capacasa/R3/USEPA/US

10/25/2005 09:45 AM

To: George Rizzo/R3/USEPA/US@EPA
cc: Rick Rogers/R3/USEPA/US@EPA, Josephine
Watson/R3/USEPA/US@EPA
Subject: FOIA Request 03-RIN-01724

I understand that you are working on items 2 thru 7 of the request from Marc Edwards which is due next Monday.

Regarding item #1, I have done email searches for responsive documents and come up with over 400 and counting. I have contacted Lori Kier of ORC for some guidance on the response since these documents will need to be screened for release, and not certain whether we should call Marc first since we can not provide electronic copies of emails and all of these documents would need to be printed out.

I'll let you know what she advises. Thanks. (We likely will need an extension to the deadline.)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Mr. Marc Edwards, PhD
Virginia Polytechnic Institute
and State University
407 Durham Hall
Blacksburg, VA 24060

Re: Freedom of Information Act Requests: 03-RIN-01428-05, 03-RIN-01429-05,
03-RIN-01430-05, 03-RIN-01439-05

Dear Mr. Edwards:

I am writing in regard to your Freedom of Information Act (FOIA) requests referenced above, dated August 5, 2005, August 7, 2005, August 5, 2005, and August 8, 2005, respectively. (EPA has treated these requests as one request in providing its response.) I would like to explain the process that EPA Region III has followed in providing its response to your request and the limitations that we have experienced in doing so. I would also like to clarify your September 9, 2005 e-mail message in which you indicated that you did not want any further response to your request beyond that covered by your pre-payment of fees.

In your request, you asked to be provided electronic copies of all e-mails sent to and from three individuals associated with Region III from June 2, 2002, to the present; copies of any minutes, reports, meeting notes, or other documentation related to Marc Edwards' EPA sub-contract with Cadmus for work on lead with the Washington Aqueduct and DC WASA; any reports or written material from DC WASA related to copper pitting, copper pinholes, or a lawsuit on pitting in the time period January 1, 2003 - May 31, 2004; any discussion, electronic or otherwise, related to the handling of the sub-contract between Cadmus and Marc Edwards and similar documentation for the follow-up EPA sub-contract between Cadmus and Dr. Steve Reiber. In addition, you asked for complete copies of all work records and notes authored by James Jerpe for the time period June 2002, until the present, and any written documentation (original minutes, reports, or finalized minutes) from Cadmus discussing the meeting held at Fort Reno on November 12, 2003, between EPA, Marc Edwards, Washington Aqueduct, and DC WASA.

On August 16, 2005, Rick Rogers responded to your request. In his response, he requested that you narrow your request by focusing on a certain topic or topics so that it would be possible to respond in a timely manner and to control the costs associated with providing a response. He also indicated how he was interpreting certain portions of your request and provided you with a cost estimate for processing your request, based upon those interpretations and the assumption that you would narrow your request. He also asked that you prepay in the



amount of \$300.00. After receiving your prepayment check, Mr. Rogers provided you with a partial response on September 2, 2005, and informed you that additional responsive documents were being gathered and would be provided to you as they became available. On September 20, 2005, a second partial response was sent to you. This response contained the majority of the remaining documents that were considered responsive to your request, based on Mr. Rogers' interpretation of the request as expressed in his August 16 response. An invoice for the cost of providing this response in excess of your prepayment amount is enclosed.

Mr. Rogers and I received an e-mail message from you on September 7, 2005, in which you acknowledged receiving his partial response and expressed your dissatisfaction with his response. In your September 7 message, you indicated that you did not want to narrow your request and that Mr. Rogers' interpretation of your request was incorrect. You were especially concerned that your request for all e-mail messages sent to and from three individuals associated with EPA Region III from June 1, 2002, to the present was interpreted to mean the e-mail messages between those three individuals. You went on to explain that you had requested electronic copies in an effort to ease the burden on those responding to your request and described how such a request is handled at Virginia Tech, i.e., the person in charge of the electronic server simply downloads all the e-mails and puts them on a disk.

You followed up with a message to Mr. Rogers and others on September 9, 2005, in which you indicated that you felt that numerous aspects of your request were purposefully ignored. You also indicated that you didn't see the point in submitting another request and seemed to indicate that you did not want any further response to your request beyond that covered by your pre-payment. Mr. Rogers subsequently informed me that you had contacted him and requested that he respond to your direct questions, in writing, since you had decided that requesting information through FOIA was pointless. I would like to point out that FOIA deals with the production of existing documents, not the creation of new documents in response to a request. Therefore, Mr. Rogers will not respond to your questions in response to your FOIA request.

After I received your September 7 message, I met with staff in the Computer Services Branch in the Region and I was informed that EPA Region III is unable to download electronic messages as easily as the procedure that you described. E-mail messages in the Region are only backed up for a period of thirty days. After that, the storage tapes are erased and re-used. Therefore, unless the messages are archived by the recipient, it would be impossible to retrieve messages that are older than thirty days from the electronic server. Although we could forward the messages that are retrievable directly to you, they would not be readable unless you use Lotus Notes to retrieve your e-mail messages. In addition, prior to providing information to any requester in any format, the Agency requires that the information be reviewed to determine if the information is releaseable. For instance, messages that contain information about private individuals would be redacted to protect the privacy rights of those individuals. In addition, any messages that contained information covered by the deliberative process or attorney client

privilege would be redacted or withheld, as would information compiled for law enforcement purposes.

While the Region has attempted, in good faith, to determine how to provide you with the information you requested, in the format you requested, it is a daunting task because your request is so broad that it covers an enormous amount of information. For example, we have determined that one of the individuals at issue has almost 37,000 messages that have been archived and are therefore retrievable. If we assume that each message is no longer than one page, it would cost over \$5,000.00 just to print a copy of each message. To send the messages to you electronically, we would have to copy the files onto another server so that they could be reviewed and redacted, as appropriate, then download them onto compact disks. Under our FOIA regulations, we are entitled to recover the direct costs that we incur in performing those tasks. Therefore, the Region routinely asks requesters to narrow very broad requests in order to control the costs incurred by the Region and requester and to ensure that requesters only receive the information that they are truly interested in receiving.

I trust that I have explained the practical difficulties that the Region has experienced in responding to your FOIA request. I would also like to confirm that you are no longer interested in receiving additional documents beyond those covered by your pre-payment. If this is not the case, please let me know so that we can re-estimate the costs of responding to your request and provide that information to you. If I do not hear from you by September 30, 2005, I will assume that you do not wish to receive any additional documents and I will close out your request.

Sincerely,

Richard Van Holt
Regional FOIA Officer



{In Archive} Fw: Revised Edwards Letter

Rick Rogers to: Jon Capacasa

Cc: George Rizzo

10/25/2005 11:10 AM

Archive: This message is being viewed in an archive.

Jon - here's the letter that was sent by Richard VanHolt to Marc Edwards - a good part of the letter was re-written by Cynthia Nadolski. It covers the explanation of how we would handle supplying electronic versions of the emails. Not impossible if you have archived your old email, but still a lot of work.

Rick

----- Forwarded by Rick Rogers/R3/USEPA/US on 10/25/2005 11:08 AM -----



**Cynthia
Nadolski/R3/USEPA/US**

09/22/2005 08:31 AM

To: Richard Vanholt/R3/USEPA/US

cc: Rick Rogers/R3/USEPA/US@EPA

Subject: Revised Edwards Letter



FOIA EDWARDS Letter (Clarify Request to WPD)